

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LARRY D. HARRIS, JR.,

Plaintiff,

v.

CARRIE SUTTER, TIM HAINES,
KELLY TRUMM, and CATHY JESS,

Defendants.

ORDER

14-cv-153-jdp

In this lawsuit, plaintiff Larry D. Harris, Jr., a pro se prisoner, is proceeding on due process claims that defendant Department of Corrections employees changed the prices of commissary items without notice and that the commissary system miscalculates the sales tax due on purchases. Now before the court is plaintiff's motion to compel non-party Charles Facktor, a DOC corrections complaint examiner, to produce the legal advice Facktor received from an attorney from the Office of Legal Counsel that Facktor used in ruling in plaintiff's favor on a grievance regarding improper assessment of sales tax. When plaintiff sent the request to Facktor, he received a response from the CCE office stating that the advice was protected by attorney - client privilege.

The motion to compel must be denied at the outset because plaintiff has not followed proper procedure to obtain testimony from a non-party; he did not subpoena this information under Fed. R. Civ. P. 45. Perhaps it is not surprising that plaintiff did not follow the correct procedure because this court has not yet held its preliminary pretrial conference,¹ at which pro se litigants are instructed about the discovery process. At this point the court takes no position on the merits of plaintiff's request or Facktor's privilege argument.

¹ The preliminary pretrial conference in this case is scheduled for September 16, 2014.

ORDER

It is ORDERED that plaintiff Larry Harris's motion to compel discovery, dkt. 20, is DENIED.

Entered this 29th day of August, 2014.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge